

Message Text

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ACTION EB-07

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TO SECSTATE WASHDC 5717

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E.O. 11652: N/A

TAGS: EAIR, GW

SUBJECT: CIVAIR: FRG LETTER ON RATE CUTTING

1. SEABOARD WORLD AIRLINES (SW) HAS PROVIDED EMBASSY COPY OF DECEMBER 18 LETTER FROM FEDERAL MINISTRY OF TRANSPORT (FMT) DIRECTOR OF CIVIL AVIATION DR. REHM, WHICH SW SAYS WAS SENT TO ALL AIRLINES OPERATING IN FRG. LETTER STATES THAT PRACTICE OF UNDERCUTTING OFFICIALLY SET TARIFFS CONTINUES IN GERMANY DESPITE EARLIER NOTICES TO THE AIRLINES AND ENFORCEMENT ACTIONS BY THE FRG INCLUDING IMPOSING OF FINES. RATE UNDERMINING IS DONE THROUGH DISCOUNTS TO PRINCIPLE CUSTOMERS, OVERLY HIGH COMMISSIONS TO AGENTS, ILLEGAL REFUNDS, OFFERS OF LOWER FARES TO THE PUBLIC, ETC. THESE PRACTICES ACCORDING TO THE LETTER LEAD TO DISTORTION IN COMPETITION AND INSTABILITY IN THE MARKET, AND ARE LARGELY RESPONSIBLE FOR THE DEFICITS THAT MANY AIRLINES ARE RUNNING. THE LETTER CALLS FOR SIMPLIFICATION OF THE TARIFF STRUCTURE BY IATA BUT DECLARES THAT THE SOLUTION TO THE PROBLEM DEPENDS MAINLY ON THE SALES BEHAVIOR OF THE AIRLINES.

2. IN ORDER TO DEAL MORE EFFECTIVELY WITH THIS PROBLEM REHM SAYS FMT WILL INCREASE ITS SUPERVISION OVER TARIFFS

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AND RAISE THE AMOUNT OF FINES FOR VIOLATORS. LETTER

CONTAINS TEXT OF DECLARATION TO BE WRITTEN ON COMPANY STATIONARY OF RECIPIENTS AND SENT TO FMT. DECLARATION IS PLEDGE BY RECIPIENT AIRLINE TO TAKE RESPONSIBILITY TO SEE THAT ITS EMPLOYEES AND AGENTS ARE BOUND BY CONTRACT TO APPLY THE LEGAL TARIFFS AND TO SUPERVISE THEIR OBSERVANCE OF THESE CONTRACTS. STATEMENT ACKNOWLEDGES AIRLINE'S AWARENESS OF RELEVANT FRG REGULATIONS AND OF POSSIBILITY THAT OPERATING LICENSE MAY BE WITHDRAWN OR RESTRICTED IN THE EVENT OF REPEATED INFRINGEMENTS OF TARIFF RULES.

3. ACCORDING TO SEABOARD REPRESENTATIVE (BUTTLER), FOREIGN AIRLINE MANAGERS ASSOCIATION MET ON THIS MATTER JANUARY 5 AND AGREED NOT TO SEND IN STATEMENTS REQUESTED BY REHM UNTIL BARIG (BOARD OF AIRLINE REPRESENTATIVES IN GERMANY) HAD CONSIDERED THE QUESTION. BECAUSE OF ABSENCE FROM COUNTRY OF SOME MEMBERS IT HAS NOT YET BEEN POSSIBLE TO HOLD A BARIG MEETING BUT ONE PROBABLY WILL TAKE PLACE NEXT WEEK. SOURCE IS OF THE OPINION THAT BARIG WILL BE UNABLE TO DEAL EFFECTIVELY WITH THE PROBLEM. A DECISION TO RECOMMEND REFUSAL TO SEND IN THE DECLARATIONS IS NOT POSSIBLE BECAUSE LUFTHANSA WOULD NOT GO ALONG. ON THE OTHER HAND, FOREIGN CARRIERS AND PROBABLY EVEN LUFTHANSA WOULD NOT BE WILLING TO BIND THEMSELVES TO STOP ALL PRICE CUTTING UNLESS THEY WERE ASSURED ALL OTHER AIRLINES WOULD ALSO DO SO. IN ANY EVENT, BUTTLER IS OF THE OPINION THAT AIRLINES WOULD NOT RISK SIGNING DECLARATIONS AND THEN CONTINUING CURRENT PRICE CUTTING PRACTICES.

4. SEABOARD FEELS THAT MARKET PRACTICES NEED REFORM BUT THAT IT WOULD BE COMMERCIAL SUICIDE FOR ANY ONE AIRLINE TO BE "HEROIC" IF THE OTHERS CONTINUED TO UNDERCUT PRICES. A WAY MUST BE FOUND TO MAKE EVERYONE TOE THE LINE AND TO CONVINCE EACH AIRLINE THAT THIS CAN BE ACCOMPLISHED.

5. COMMENT: REHM'S LETTER IS AN ATTEMPT TO DEAL WITH A SITUATION OF RATHER LONG STANDING AND COMPLEXITY. LIMITED OFFICIAL USE

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OUR PRELIMINARY OPINION (THAT WE WILL TRY TO CHECK WITH LOCAL EXPERTS) IS THAT FACT OF SIGNING FMT'S STATEMENT WOULD NOT ADD TO LEGAL LIABILITY OF AIRLINES GUILTY OF VIOLATING REGULATIONS WHICH THEMSELVES SEEM TO BE SUFFICIENT LEGAL BASIS FOR MOVING AGAINST VIOLATORS. IT SEEMS LIKELY THAT FMT'S PURPOSE IS MORAL SUASION AND PERHAPS TO FORCE THE AIRLINES TO FACE UP TO THE PROBLEM AND TO GET TOGETHER AND TRY TO

FIND A WAY TO DEAL WITH IT. WHETHER INTENDED OR NOT,
REHM'S LETTER HAS ALREADY HAD THE LATTER RESULT.
HILLENBRAND

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